

## NOTICE 2681 OF 1999

## DEPARTMENT OF PUBLIC WORKS

**Emanating from the** White Paper entitled "Creating an Enabling Environment for Reconstruction, Growth and Development in The Construction Industry", published in Government Gazette No 20095 of 21 May 1999, the Minister of Public Works, Ms Stella Sigcau, now publishes this Draft Construction Industry Development Board Bill for public comment.

Written comments and inputs are invited from interested parties and the general public, which must be submitted to:

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**THE CLOSING DATE FOR COMMENT IS: 28 January 2000**

## CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

### BILL

To provide for the establishment and functions of the Construction Industry Development Board to implement an integrated strategy for the reconstruction, growth and development of the construction industry; and to provide for matters connected therewith.

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**CHAPTER ONE****Definitions:**

1. In this Act, unless the context otherwise indicates:
  - (a) “best practice”, means a desirable and appropriate standard, process, procedure, method or system, which during the delivery process and the life cycle of fixed assets, advances improvement in -
    - (i) national socio-economic development, including labour absorption, equity in the construction industry and human resource development;
    - (ii) technical outcomes, including quality, productivity and efficiency;
    - (iii) safety health and environmental outcomes;
  - (b) “best practice project assessment scheme”, means the quantification of best practice in projects contemplated in section 22;
  - (c) “Board”, means the Construction Industry Development Board established by section 2;
  - (d) “chairperson” means the chairperson of the Board appointed in terms of section 6(1 I)(a);
  - (e) “chief executive officer” means the chief executive officer appointed in terms of section 10;
  - (f) “client” means a person, body or organ of State who enters into a contract to procure construction works;
  - (g) “construction industry” means the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment;
  - (h) “Construction Education and Training Authorities (CETA)”, means an organ of

the Sector Education Training Authority established in terms of section 9(1) of the Skills Development Act,(Act No.97 of 1998);

- (i) “Contractor means an entity which undertakes to execute and complete construction works;
- (j) “Construction works” means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;
- (k) “Council for the Built Environment” means the Council for Built Environment Professions established in terms of section 2 of the Council for the Built Environment Bill, 1999 as published in government notice No1496 of 1999 (Gazette No.20281);
- (l) “emerging enterprise”, means an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid;
- (m) “emerging sector” means that sector of the construction industry which comprises emerging enterprises;
- (n) “Inter-ministerial Committee” means the consultative committee established and co-ordinated by the Minister in terms of section 17;
- (o) “Construction industry Stakeholder Council” means the advisory council established in terms of section 13 of this Act and hereafter referred to as “the Council”;
- (p) “member” means a member of the Board appointed in terms of section 6, or a member of the Council appointed in terms of section 13, as the case may be;
- (q) “Minister” means the Minister of the National Department responsible for Public works;
- (r) “National Home Builders Registration Council” means the National Home

**Builders Registration Council, established in terms of section 2 of the National Housing Consumer Protection Measures Act 1998 (Act No. 95 of 1998);**

- (s) “Organ of State” means-**
- (i) any department of state administration in the national, provincial or local sphere of government, or**
  - (ii) any other functionary or institution**
    - (aa) exercising a power or performing a function in terms of the constitution or provincial constitution; or**
    - (bb) exercising a public power or performing a public function in terms of any legislation but does not include a court or a judicial officer;**
- (t) “prescribed” means prescribed by regulation in terms of section 34;**
- (u) “project” means a construction works contract or a series of connected construction work contracts;**
- (v) “register” means a register of contractors as referred to in section 18 or the register of projects, established in terms of section 23, as the case may be;**
- (w) “regulation” means a regulation made under section 34 of this Act; and,**
- (x) “this Act” includes the regulations.**

**CHAPTER TWO****Establishment of Board**

2. The Construction Industry Development Board is established as a juristic person.

**Independence of Board**

3. The Board shall perform its functions free from undue influence.

**Objects of Board**

4. (1) The objects of the Board are to:
  - (a) optimise the contribution of the construction industry in meeting national construction demand, in promoting national, social and economic development objectives, industry performance, efficiency and competitiveness, and improved value to clients;
  - (b) provide strategic leadership and focused support to construction industry stakeholders for ongoing growth, development, reform, improvement, expansion and sustainability of the construction sector;
  - (c) establish appropriate and uniform best practice standards and guidelines that promote improved industry stability, performance and

- efficiency, national, social and economic objectives, growth of the emerging sector, labour absorption, skill formation, procurement and delivery management reform, safety, health and environmental outcomes;
- (d) promote best practice through the development and implementation of appropriate programmed and measures aimed at the improved performance of public and private sector clients, contractors and other participants in the construction delivery process;
  - (e) promote uniform application of policy with regard to the construction industry, throughout all spheres of Government;
  - (f) establish, endorse and promote uniform and ethical standards to regulate the actions and practices of parties engaged in construction contracts;
  - (g) support, facilitate, monitor and evaluate policies, programmed and projects aimed at, amongst others, improved labour relations, industry skill formation, procurement reform, contractor development, innovation, excellence and best practice in accordance with the means and objects of the board;
  - (h) provide information to stakeholders on best practice, industry performance and improvement and on matters affecting the construction industry;
  - (i) provide consultancy and advisory services on issues within the scope and ambit of the Board;
  - (j) stimulate and promote appropriate research on any matter related to the construction industry and its development;
  - (k) on request of the Minister, provide advice and recommendations to him or her on the construction industry and the effectiveness of government



policy and programmed, which impact on construction industry growth and development;

- (l) facilitate communication between construction industry stakeholders, spheres of government and statutory bodies;
- (m) account to the Minister for the implementation of policy; or
- (n) promote any other related objective.

#### Functions of Board

5. (1) For the purpose of achieving its objects, the Board -:
- (a) shall determine best practice priorities and develop and publish best practice standards and guidelines;
  - (b) may develop targets and performance indicators related to standards and guidelines referred to in subsection 5(1)(a) and establish mechanisms to enable effective monitoring and evaluation thereof;
  - (c) shall establish and maintain a national register of contractors, which provides for categories of contractors in a manner which facilitates public sector procurement, contractor development and the monitoring of contractor performance which incorporates other statutory registers;
  - (d) shall establish and maintain a register of projects and a best practice project assessment system for the promotion, assessment and evaluation of best practice on construction contracts;
  - (e) may establish and maintain any register of suppliers, manufacturers or service providers in the construction industry;

- (g) may monitor economic activity within the construction sector and the measures according to which public sector construction expenditure is scheduled, and advise the Minister accordingly;
- (g) shall identify delivery constraints and advise the Minister on policy, practice and procedural reform in relation to public sector client performance and public sector capacity improvement;
- (h) may initiate, monitor, promote and implement national programmed and projects aimed, amongst others, at:
- i) emerging enterprise support;
  - ii) work process transformation;
  - iii) innovation, industry excellence and best practice processes;
  - iv) streamlining of regulation and procedures;
  - v) procurement reform;
  - vi) standardisation and uniformity in procurement documentation, practices and procedures;
  - vii) design best practice and value for money;
  - viii) regional co-operation and international competitiveness;
- (i) may develop and promote an industry research agenda;
- (j) may establish a knowledge centre through which industry and clients can access knowledge and experience on innovation and best practice;
- (k) shall consult with all organs of state in order to identify the construction industry related budgets and to monitor the application of such budgets;
- (l) shall consult with other statutory organisations such as, but not limited to, the Construction Industry Sector Education and Training Authorities, the National Home Builders Registration Council and the Council for the Built Environment, on statutory matters which impact on construction industry development;

- (m) shall establish and maintain a code of conduct for all construction related procurement and all participants involved in the procurement process;
- (n) may promote the export of construction works and services;
- (o) may advise the Minister on policy, legislation and regulations that impact on the construction industry, including the regulations made under this Act;
- (p) may make recommendations to the Minister in respect of any proposed amendments to this Act that the Board considers necessary;
- (q) shall submit an annual business plan to the Minister for approval and report annually on its implementation;
- (r) shall ensure a five yearly independent evaluation of itself in relation to its effectiveness;
- (s) may charge fees for services rendered by the Board;
- (t) may establish any committee to assist it in the performance of its functions and appoint any person as a member of that committee;
- (u) may collect statistics from contractors, suppliers, manufacturers and service providers in the construction industry, including the size and nature of their business undertakings and the size and nature of the projects they undertake;
- (v) may conduct surveys of the construction industry for the purpose of this Act; and,
- (w) may perform such other functions as may be prescribed, and generally do all such things as it considers necessary or expedient to achieve the objects of this Act.

- (2) The Board may, with the approval of the Minister  
acquire, hire or dispose of property, borrow money on the security of the assets  
of the Board and accept any donation.

### Composition of Board

6. (1) The Board consists of at least nine but not more than 13 members, appointed by  
the Minister.
- (2) Members of the Board -
- (a) must be citizens of the Republic of South Africa. and normally resident  
in the Republic;
  - (b) may not be a political office bearer.
- (3) In the appointment of the members of the Board, the Minister must take  
cognizance of the need to achieve a balance of expertise and knowledge of the  
industry, whilst broadly reflecting the race, gender and geographic composition  
of the Republic.
- (4) When any nomination becomes necessary, the Minister must invite, by notice in  
the *Gazette* and any other newspaper he or she considers necessary, but at  
least in a leading newspaper in each province, nominations of persons as  
candidates for positions on the Board, to be submitted within a period of at least  
60 days.
- (5) The invitation referred to in subsection (4), must specify the required expertise  
of the candidates.
- (6) On receipt of any nomination the Minister must within 60 days from the expiry  
date specified in the invitation, appoint the members of the Board.

- (7) If the Minister receives no or insufficient nominations within the period specified in the invitation or the notice, he or she may appoint any person in accordance with subsection (4).
- (8) The Minister must, as soon as practicable after the appointment of the members of the Board, by notice in the *Gazette*, publish -
- (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (9) Within 30 days after the appointment of the Board, the Minister must determine the time and place of its first meeting, and the Board must determine the time and place of any future meeting.

(1 O) A nominated person may not be:

- (a) an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence;
- (b) a person who has been removed from an office of trust on account of misconduct.

(11) The Minister shall appoint persons, who in his or her opinion, are persons having experience and expertise in matters pertaining to the construction industry and its development objectives, to be:

- (a) the chairperson of the Board;
- (b) the deputy-chairperson of the Board.

#### Period and conditions of membership

7. (1) A member of the Board holds his or her office for a period, not exceeding three years, on the conditions determined by the Minister.
- (2) On expiry of a member's first term of office, that member may be re-appointed for another term of office.

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- (3) A member of the Board may not serve on the Board for more than two consecutive terms.
- (4) An appointed member must immediately vacate his or her office if he or she:
- (a) is convicted whether in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or of any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), the Companies Act, 1973 (Act No. 61 of 1973), or of contravening this Act;
  - (b) becomes a political office bearer;
  - (c) becomes an insolvent as contemplated in section 6(1 O)(a);
  - (d) has been removed from an office of trust on account of misconduct; or is relieved of his or her duties under subsection (5);
  - (e) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board.
- (5) The Minister shall in writing immediately relieve any appointed member if that member has:
- (a) failed to immediately vacate his or her office in terms of subsection (3) or (4);
  - (b) failed to comply with section 6;
  - (c) failed to attend two consecutive meetings of the Board without leave of the Board as noted in the minutes of those meetings, which leave may be granted retrospectively;
  - (d) been convicted of an offence during his or her term of office and sentenced either in the Republic or elsewhere, to imprisonment for a period exceeding three months, or a fine as an alternative thereto;
  - (e) failed, in the opinion of the Minister, to uphold and advance the objects of the Board.

- (6) If an appointed member dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint another person to fill the vacancy for the remaining portion of the period for which that member was appointed, and the procedure in section 6(5) must apply in respect of an appointment in terms of this subsection.

#### Remuneration of members

8. A member of the Board receives such remuneration and allowances as approved by the Minister.

#### Disclosure of interest

9. (1) If a member of the Board, or his or her spouse, immediate family member, life partner or business associate, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the Board, that member
- (a) must immediately after that interest has come to his or her attention, disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the beginning of the next meeting of the Board;
  - (b) may not attend any portion of a meeting of the Board during the consideration of that matter by the Board;
  - (c) may not in any manner take part as a member of the Board in the consideration of that matter by the Board;

- (d) may not in any manner endeavour to influence the opinion or vote of any other member of the Board in connection with that matter.

### **Chief Executive Officer**

10. (1) (a) The Board, in consultation with the Minister, appoints the chief executive officer.
- (b) The chief executive officer may be re-appointed at the expiry of his or her term of office.
- (2) The chief executive officer holds office for a period of five years on the conditions, including conditions providing for remuneration and allowances, as the Board in consultation with the Minister determines.
- (3) The chief executive officer must enter into a performance contract with the Board on acceptance of the appointment.
- (4) The chief executive officer -
- (a) is responsible to the Board for the execution of his or her functions in terms of this Act;
- (b) shall manage and control the daily activities of the Board in accordance with the business and financial plans of the Board;
- (c) is the accounting officer of the Board charged with accounting for moneys received, payments made and movable property purchased by the Board;
- (d) in consultation with the Board, appoint the staff of the Board.



### Staff of Board

11. (1) The chief executive officer may on such conditions as the Board determines appoint such employees as are necessary to enable the Board to properly carry out its functions.
- (2) The Board pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as the Board determines.
- (3) An employee of the State may, subject to the Public Service Act, 1994, be seconded to the Board.

### Meetings

- '2(1) The Board shall meet at least four times a year.
- (2) The chairperson of the Board, or in his or her absence the deputy-chairperson, must give each member of the Board 14 days written notice of the time, date and place of the meeting as well as the matters to be discussed.
- (3) The chairperson, or in his or her absence the deputy-chairperson, presides at meetings of the Board.
- (4) In the absence of both the chairperson and the deputy-chairperson, a member of the Board elected by the members present presides at meetings of the Board.
- (5) The chairperson or in his or her absence the deputy-chairperson, may at any time call an additional meeting of the Board.
- (6) The Board shall keep a register of attendance and minutes prepared of the proceedings of its meetings and must circulate copies thereof to the members of the Board.

- (7) The minutes so prepared, when confirmed at the next meeting and signed by the person who chairs that meeting, will in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute.
- (8) The quorum for a meeting of the Board is a majority of its members present.
- (9) A decision of the majority of the members of the Board present at any meeting constitutes a decision of the Board.
- (10) In the event of an equal number of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (11) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised in good faith by the requisite majority of the members of the Board who were present at the time and entitled to sit as members

### **Construction Industry Stakeholder Council**

- 13(1) The Board shall constitute a Construction Industry Stakeholder Council to inform the Board on matters that affect the development of the construction industry.
- (2) The Council comprises individuals who have experience, expertise or skills necessary to enable the Council to advise the Board appropriately and who represent stakeholders in the construction industry.
  - (3) Before the individuals contemplated in subsection (2) are appointed, the Board must once every two years invite nominations from organised labour, organised

business and construction industry related bodies, clients, societies and associations in a manner the Board considers fit, specifying a period within which those nominations must be submitted.

- (4) A member of the council holds office for a period of two years and is eligible for reappointment upon the expiration of his or her period of office.
- (5) A member of Council must vacate office if the represented stakeholder notifies the Board in writing that such an individual ceases to represent them.
- (6) In circumstances referred to in subsection (5) the represented stakeholder may nominate a replacement who shall assume office for the remainder of the unexpired term of office.
- (7) The Council shall appoint its own chairperson and convene for at least two meetings per annum with the chief executive officer and the Board.
- (8) The Council shall meet at least once per year with the Minister, on specific matters raised by the Council in a written submission and tabled two months prior to the meeting. The chief executive officer and the Board shall be present at the meeting.

#### Annual report

14(1) The Board must within five months of the end of each financial year submit to the Minister an annual report pertaining to the financial state of affairs and business of the Board as at the end of the immediately preceding financial year, consisting of:

- (a) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Board as at the end of that financial year;
- (b) a report by the Board in accordance with the provisions of subsection (2);

- (c) a report by the auditor of the Board in accordance with the provisions of subsection (3);
  - (d) any other statement or report which the Minister or the Minister of Finance may require.
- (2) The report of the Board referred to in subsection (1)(b) must deal with the state of affairs, the activities and operations, and the financial position of the Board, and must:
  - (a) state the extent to which the Board has achieved or advanced its objectives during the financial year concerned and specifically the detailed objectives of the business and financial plan;
  - (b) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in the business plan
- (3) The auditor's report referred to in subsection (1)(c) must state separately in respect of each of the following matters whether in the auditor's opinion-
  - (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the Board in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year;
  - (b) the information furnished in terms of paragraph (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year;
  - (c) the examined transactions of the Board were made in accordance with this Act, the Reporting by Public Entities Act, 1992, and any applicable directives or regulations made **thereunder**;

- (d) the examined transactions were in all material respects in accordance with the objects and functions of the Board;
  - (e) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management;
  - (g) attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of the Minister and Parliament.
- (4) The Minister shall cause copies of the financial report submitted to him or here in terms of subsection (1) to be tabled in Parliament within 14 days of receipt of that report, or, if Parliament is not then in session, within 14 days after commencement of its next ensuing session.
- (5) A copy of the financial report submitted to the Minister in terms of subsection (1) must be open to inspection by the public at the head office of the Board during business hours.

#### Evaluation and review

15(1) The Board shall facilitate a five yearly review of its activities in relation to its goals and objectives.

- (2) The evaluation must be undertaken by a panel drawn from the public and private sector, appointed by the Minister on the basis of their expertise in relation to the functions of the Board
- (3) The panel shall submit its report and recommendations to the Minister.

**Delegation of power**

**16(1 ) The Board may delegate its powers in terms of this Act to any person it considers fit.**

**(2) The Board cannot be divested of any power so delegated, and may amend or withdraw any such delegation as contemplated in subsection (1).**

## CHAPTER THREE

**Consultative Committee**

- 17(1) The Minister shall establish and co-ordinate a consultative committee, known as the Inter-ministerial Committee on Construction Industry Development, consisting of, but not limited to, Ministers of Government Departments within whose functional area the provision of infrastructure falls.**
- (2) The committee shall consult on matters such as, but not limited to:**
- a) the development and implementation of policies affecting the construction industry;**
  - b) the objects and functions of the Board;**
  - c) the board's business plan;**
  - d) issues raised by construction industry stakeholders with the various spheres of government.**
- (3) The Minister may consult with any relevant body on any matter pertaining to the construction industry.**

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**CHAPTER FOUR****Registration of Contractors**

**18(1 ) The Board must, within its first three years of appointment, establish a national register of contractors, which categorises contractors in a manner that facilitates public sector procurement and promotes contractor development.**

**(1) The objectives of the register are to:**

- (a) reduce the risk relating to the selection of contractors;**
- (b) assess the performance of contractors in the execution of a contract and serve to promote minimum standards and minimum statutory requirements;**
- (c) regulate behaviour, actions and practices of contractors in relation to procurement and promote good business practices;**
- (d) reduce the administrative burden associated with the awarding of contracts;**
- (e) reduce tendering costs to both clients and contractors;**
- (g) store data on -**
  - (i) the size and distribution of contractors operating within the industry; and**
  - (ii) the volume, nature and performance of contractors and target groups;**
- (9) enable access by the private sector and thus facilitate private sector procurement.**



- (3) The Minister shall, prescribe the manner in which public sector construction contracts shall be awarded and managed within the framework of the register.
- (4) From a date determined by the Minister by notice in the *Gazette*, every organ of State must apply the register of contractors in its procurement process.
- (5) The register of contractors must be based on, but not limited to, the following principles:
  - (a) contractors must be registered within certain categories of work, according to their past performance and financial capacity;
  - (b) registration must result in the contractor being viewed as suitably registered for work of a general nature within those categories for which the contractor is registered;
  - (c) the register must cater for large and small enterprises, main or subcontractors;
  - (d) new entrant enterprises, in particular emerging enterprises, which have not established a sufficient track record commensurate with their capacity may be accommodated with special concessionary rules;
  - (e) membership of a contractor federation, trade federation or professional body is not mandatory for registering;
  - (g) the register must have a mechanism to allow for the exclusion or rejection of contractors on prescribed grounds, but particularly on:
    - (i) conviction of a criminal offence or grave misconduct relating to the pursuance of the contractor's profession or business;
    - (ii) unacceptable performance on construction contracts;
- (6) A contractor may apply in writing for registration with the Board in terms of this Act to the Board and the application must be accompanied by the prescribed particulars and prescribed fees, which are not refundable.

- (7) An application for registration with the Board may not be processed or considered unless the requirements contemplated in subsection (5) have been met.
  - (8) If the Board is satisfied that the applicant is entitled to registration, it must cause the necessary entry to be made in the register, and the chief executive officer must thereupon issue to the applicant a registration certificate in the prescribed form.
  - (9) The Board must within a reasonable period after the establishment of the Register of Contractor, establish a Best Practice Contractor Recognition Scheme which:
    - (a) enables organs of state to manage risk on complex contracting strategies;
    - (b) promotes contractor development on best practice standards and guidelines developed by the Board in terms of section 4(l)(c).
- (10) The Minister may on the recommendation of the Board prescribe a fee to be paid annually to the Board by all contractors registered with the Board in terms of subsections (6) and (9).

#### **Keeping of Register**

- 19(1) The Board shall keep a register of the prescribed particulars of contractors who are registered with the Board and a registered contractor must in writing notify the Board of substantive changes of those particulars within 30 days after such a change.
- (2) The Board shall maintain the register.
  - (3) Any registration which is proved to the satisfaction of the Board to have been made in error or as a result of misrepresentation or in circumstances not authorised by this Act, must be removed from the register, and an entry of the reason for such removal must be made in the register.
  - (4) A contractor, whose registration is removed from the register in terms of

subsection (3), must be notified thereof in accordance with the provisions of section 21(2).

- (5) The effective date of cancellation of a registration certificate is the date on which notice is given in terms of subsection (4).
- (6) A contractor may apply to the Board to amend its category status.

#### Unregistered contractors

- 20 (1) A contractor may not undertake, carry out or complete any construction works or portion thereof for public sector contracts unless he or she is registered with the Board and holds a valid certificate of registration issued by the Board.
- (2) Any contractor who carries out or attempts to carry out any construction works or portion thereof under a public sector contract and who is not a registered contractor of the Board in terms of this Act, is guilty of an offence and liable to pay a fine as prescribed.
- (3) A contractor referred to in subsection (2) must upon receipt of a written notice on a prescribed form from the Board, cease to continue any public sector construction work. (4) A contractor who is de-registered during the currency of a contract may be permitted to complete the construction works or portion thereof, as determined by the Board.

**Removal of names from, and the restoration thereof to the register**

- 21 (1) The Board may order the chief executive officer to remove the name of any contractor from the register if the Board is satisfied that such contractor
- (a) has breached the renditions for registration;
  - (b) has failed to satisfy the conditions for registration;
  - (c) is a contractor as referred to in section 19(3).
- (2) Notice of removal in terms of subsection (1) of a contractor's name from the register or the removal in terms of section 19(3) of an entry from the register, must be given by the chief executive officer to the contractor concerned by sending a registered letter embodying the notice of removal to such a contractor at the address appearing in the register.
- (3) As from the date on which notice is given in subsection (2):
- (a) any registration in terms of this Act to the contractor concerned is cancelled;
  - (b) that contractor ceases to be a registered contractor of the Board and may not perform any act which he or she was entitled to perform as a registered contractor.
- (4) A contractor, who has been removed from the register in terms of this section, may be restored to the register of contractors if he or she complies with such requirements as the Board may determine.

**Duration and renewal of registration**

- 22 (1) Registration by the Board in terms of this Act is valid for a period of three years from the date of registration.
- (2) A registered contractor shall apply for renewal of registration three months before the existing registration expires and must pay the prescribed renewal fee
- (3) The Board is under no obligation to approve an application for renewal by reason of the fact that the contractor is currently registered with the Board in terms of the Act.

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**CHAPTER FIVE****Register of Projects**

- 23 (1) The Board shall within its first three years of existence establish a Register of Projects. The objectives of the register are to gather information on the nature, value, and distribution of projects and provide the basis for the best practice project assessment scheme contemplated in section 24.
- (2) The Minister shall prescribe guidelines on the use and operation of the register.
- (3) All construction contracts above a prescribed tender value must be recorded on the register.
- (4) The Minister may, on the recommendation of the Board, prescribe a fee to be paid annually to the Board by all clients for registration of projects.

**Best Practice Project Assessment Scheme**

- 24 (1) The Board must within a reasonable period after the establishment of the Register of Projects establish a Best Practice Project Assessment Scheme based on the best practice standards and guidelines developed by the Board in terms of section 4(l)(c).
- (2) After a date determined by the Minister in the *Gazette*, all construction contracts above a prescribed tender value are subject to an assessment of compliance with best practice standards and guidelines published by the Board in the *Gazette*.
- (3) Every client who engages in the Best Practice Project Assessment Scheme must pay to the Board a prescribed percentage of the contract sum as agreed by the client and the contractor at the time of the award of the contract.

## CHAPTER SIX

## Funding of Board

25 (1) The funds of the Board consist of

- (a) monies appropriated by Parliament for the achievement of the objectives of the Board;
- (b) income derived by virtue of the exercise and performance of its responsibilities and functions;
- (c) donations or contributions received by the Board from any source with the approval of the Minister;
- (d) income derived by virtue of subsection (2).

(2) The Board shall charge the prescribed fees for

- (a) registration and recognition of contractors;
- (b) registration and assessment of projects;
- (c) any other service provided by the Board in the performance of its functions.

(3) The Board shall:

- (a) use its funds to defray expenses incurred by it in the performance of its functions;
- (b) use donations or contributions contemplated in subsection 1 (c) for such purposes and in accordance with such conditions, if any, as are specified by the donor or contributor concerned, with the approval of the Minister.

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- (4) The chief executive officer must open an account in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990).
  - (5) The Board may invest any unspent part of the Board's funds and use interest accrued on such investments to defray expenses in connection with the performance of its functions.
  - (6) The Board may, with the approval of the Minister, authorise the establishment of such reserve funds and deposit such amounts therein as the Board deems necessary and desirable.
  - (7) The Board must in each financial year, at such time as determined by the Minister, submit a statement of the Board's estimated income and expenditure for the following year to the Minister for his or her approval .
  - (8) The Board must comply with the provisions of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).

#### Loans

26 The Board may, with the approval of the Minister, raise money by way of a loan, or otherwise obtain money at such rate of interest and on such conditions as the Board considers fit.

#### Accounting **officer** and accounting

27 (1) The chief executive officer is the accounting officer of the Board.

- (2) The accounting officer must, perform the functions assigned to him or her by this Act, the Reporting of Public Entities Act, 1992 (Act No. 93 of 1992), or any other law or by the Board or by the Minister.



- (3) The accounting officer must within three months of the end of the financial year, with the approval of the Minister, complete the annual financial statements in respect of the Board.
- (4) The Auditor-General must conduct the external auditing of the Board.

#### **Financial year of Board**

28 The Board's financial year is from 1 April in any year to 31 March in the following year, but the first financial year is from the date of the coming into operation of this Act to 31 March of the following year.

#### **Exemption from duties and fees**

29 The board is exempt from the payment of any duty or fee which, were it not for the provisions of this section, would have been payable by it to the State in terms of any law except the Value Added Tax Act, 1991 (Act No. 105 of 1991), in respect of any act or transaction or any document connected with that act or transaction.

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**CHAPTER SEVEN****Restriction on the use of the name**

**30 (1) No person may under a name containing the words "Construction Industry Development Board" or the translation thereof in any other official language-**

- (a) conduct his or her or its affairs or business or his, her or its occupation or trade;**
- (b) falsely claim to be acting on behalf of the Board.**

**Enforcement**

**31 (1) The Board may, for the purposes of implementing the code of conduct referred to in section 5(1)(m), convene an inquiry into any breach of the code of conduct and shall conduct the inquiry in the prescribed manner.**

**(2) The Board may-**

- (a) subpoena any person to appear in person at an inquiry;**
- (b) subpoena any person to produce any documentation relevant to such an inquiry,**
- (c) seize and make copies of the documentation produced in terms of subsection (2)(b).**

### Secrecy

- 32 (1) The chief executive officer, staff and all members of the Board, may not disclose any information that may be considered "secret" or "confidential to any source outside of the Board.
- (2) Any person who breaches subsection (1 ) is subject to disciplinary action conducted in the prescribed manner.

### Personal liability

- 33(1 ) A person is not liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom.

### Regulations

- 34 (1) The Minister may, by notice in the *Gazette*, make regulations not inconsistent with this Act, with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but not less than 30 days from the date of publication of the notice. If the Minister alters the draft regulations as a result of any comment, he or she need not publish those alterations before making the regulations.
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- (3) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (2).

**Short title and commencement**

35. This Act is called the Construction Industry Development Board Act, 2000 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.